

CHAPTER 238 USE TAX LAW

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Law Journals and Reviews

Taxes in Hawaii Since July 1, 1968: A report on the Unreported Decisions of Judge Dick Yin Wong, Arthur B. Reinwald, 9 HBJ 95.
Hawaii's General Excise Tax Law: A Comprehensive Review of the Decisions. II HBJ No. 13, at pg. 1.

18-238-1

§238-1 Definitions, generally. Whenever used in this chapter, unless otherwise required by the context:

“General excise tax law” means chapter 237, as amended from time to time.

“Import” (or any nounal, verbal, adverbial, adjective, or other equivalent of the term) includes:

- (1) The importation into the State of tangible property, services, or contracting owned, purchased from an unlicensed seller, or however acquired, from any other part of the United States or its possessions or from any foreign country, whether in interstate or foreign commerce, or both; and
- (2) The sale and delivery of tangible personal property owned, purchased from an unlicensed seller, or however acquired, by a seller who is or should be licensed under the general excise tax law from an out-of-state location to an in-state purchaser, regardless of the free on board point or the place where title to the property transfers to the purchaser.

“Overhead” means continuous or general costs occurring in the normal course of a business, including but not limited to costs for labor, rent, taxes, royalties, interest, discounts paid, insurance, lighting, heating, cooling, accounting, legal fees, equipment and facilities, telephone systems, depreciation, and amortization.

“Person”, “business”, “engaging in business”, “retailer”, “wholesaler”, “jobber”, and “contractor” have the meanings defined by chapter 237.

“Price” means the total amount for which tangible personal property, services, or contracting are purchased, valued in money, whether paid in money or otherwise, and wheresoever paid; provided that cash discounts allowed and taken on sales shall not be included.

“Property” means tangible personal property and prepaid telephone calling services but does not include newspapers or other periodical publications purchased on the subscription plan, issued at stated intervals as frequently as four times a year, and of the class admitted to the United States mails as second class matter under the laws and regulations governing the postal service on January 1, 1965.

“Purchase” and “sale” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means, wheresoever consummated, of tangible personal property, services, or contracting for a consideration.

“Purchaser” means any person purchasing property, services, or contracting and “importer” means any person importing property, services, or contracting, regardless if at the time of importation, the property, services, or contracting is owned by the importer, purchased from an unlicensed seller, or however acquired; provided that the terms

“purchaser” and “importer” shall not include the State, its political subdivisions, or wholly owned agencies or instrumentalities of the State or a political subdivision; or the United States, its wholly owned agencies or instrumentalities, or any person immune from the tax imposed by this chapter under the Constitution and laws of the United States but the terms shall include national banks.

“Representation” refers to any or all of the following:

- (1) A seller being present in the State;
- (2) A seller having in the State a salesperson, commission agent, manufacturer’s representative, broker, or other person who is authorized or employed by the seller to assist the seller in selling property, services, or contracting for use or consumption in the State, by procuring orders for the sales, making collections or deliveries, or otherwise; and
- (3) A seller having in the State a person upon whom process directed to the seller from the courts of the State may be served, including the director of commerce and consumer affairs and the deputy director in the cases provided in section 414-64.

“Seller” means any person engaged in the business of selling tangible personal property, services, or contracting, whosoever engaged, but does not include the United States or its wholly owned agencies or instrumentalities other than national banks, the State or a political subdivision thereof, or wholly owned agencies or instrumentalities of the State or a political subdivision.

“Service business or calling” includes all activities engaged in for other persons for a consideration that involve the rendering of a service as distinguished from the sale of tangible personal property or the production and sale of tangible property. “Service business or calling” includes professional services, but does not include services rendered by an employee to the employee’s employer.

“Unlicensed seller” means any seller who, with respect to the particular sale, is not subject to the tax imposed by chapter 237, whether or not the seller holds a license under that chapter, but does not include any seller with respect to any sale which is expressly exempted from the tax imposed by chapter 237.

“Use” (and any nounal, verbal, adjectival, adverbial, and other equivalent form of the term) herein used interchangeably means any use, whether the use is of such nature as to cause the property, services, or contracting to be appreciably consumed or not, or the keeping of the property or services for such use or for sale, the exercise of any right or power over tangible or intangible personal property incident to the ownership of that property, and shall include control over tangible or intangible property by a seller who is licensed or who should be licensed under chapter 237, who directs the importation of the property into the state for sale and delivery to a purchaser in the State, liability and free on board (FOB) to the contrary notwithstanding, regardless of where title passes, but the term “use” shall not include:

- (1) Temporary use of property, not of a perishable or quickly consumable nature, where that property is imported into the State for temporary use (not sale) therein by the person importing the same and is not intended to be, and is not, kept permanently in the State. For example, without limiting the generality of the foregoing language:
 - (A) In the case of a contractor importing permanent equipment for the performance of a construction contract, with intent to remove, and who does remove, the equipment out of the State upon completing the contract;
 - (B) In the case of moving picture films imported for use in theaters in the State with intent or under contract to transport the same out of the State after completion of such use; and
 - (C) In the case of a transient visitor importing an automobile or other belongings into the State to be used by the transient visitor while therein but which are to be used and are removed upon the transient visitor’s departure from the State;
- (2) Use by the taxpayer of property acquired by the taxpayer solely by way of gift;
- (3) Use which is limited to the receipt of articles and the return thereof, to the person from whom acquired, immediately or within a reasonable time either after temporary trial or without trial;
- (4) Use of goods imported into the State by the owner of a vessel or vessels engaged in interstate or foreign commerce and held for and used only as ship stores for the vessels;
- (5) The use or keeping for use of household goods, personal effects, and private automobiles imported into the State for nonbusiness use by a person who:
 - (A) Acquired them in another state, territory, district, or country;
 - (B) At the time of the acquisition was a bona fide resident of another state, territory, district, or country;
 - (C) Acquired the property for use outside the State; and
 - (D) Made actual and substantial use thereof outside this State;provided that as to an article acquired less than three months prior to the time of its importation into the State it shall be presumed, until and unless clearly proved to the contrary, that it was acquired for use in the State and that its use outside the State was not actual and substantial;
- (6) The leasing or renting of any aircraft or the keeping of any aircraft solely for leasing or renting to lessees or renters using the aircraft for commercial transportation of passengers and goods or the acquisition or importation of any such aircraft or aircraft engines by any lessee or renter engaged in interstate air

transportation. For purposes of this paragraph, “leasing” includes all forms of lease, regardless of whether the lease is an operating lease or financing lease. The definition of “interstate air transportation” is the same as in 49 U.S.C. 40102;

- (7) The use of oceangoing vehicles for passenger or passenger and goods transportation from one point to another within the State as a public utility as defined in chapter 269;
- (8) The use of material, parts, or tools imported or purchased by a person licensed under chapter 237 which are used for aircraft service and maintenance, or the construction of an aircraft service and maintenance facility as those terms are defined in section 237-24.9;
- (9) The use of services or contracting imported for resale where the contracting or services are for resale, consumption, or use outside the State pursuant to section 237-29.53(a);
- (10) The use of contracting imported or purchased by a contractor as defined in section 237-6 who is:
 - (A) Licensed under chapter 237;
 - (B) Engaged in business as a contractor; and
 - (C) Subject to the tax imposed under section 238-2.3; and
- (11) The use of property, services, or contracting imported by foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes.

With regard to purchases made and distributed under the authority of chapter 421, a cooperative association shall be deemed the user thereof.

“Value” means fair and reasonable cash value at the time of accrual of the tax. [L 1965, c 155, pt of §2 and c 201, §40; Supp. §119-1; HRS §238-1; am L 1971, c 4, §6; am L 1974, c 144, §2; am L 1981, c 167, §4; am L 1982, c 204, §8; am L 1983, c 124, §17 and c 167, §4; am imp L 1984, c 90, §1; am L 1985, c 270, §4; gen ch 1985; am L 1997, c 107, §4; am L 1999, c 70, §4; am L 2000, c 27, §2, c 38, §3 and c 198, §7; am L 2001, c 210, §3; am L 2002, c 40, §8; am L 2004, c 114, §2]

Revision Note

Definitions rearranged.

Paragraph (11) redesignated pursuant to §23G-15(1).

Note

Chapter 422 referred to in text is repealed.

The 1999 amendment applies to all taxes accruing after December 31, 1999. L 1999, c 70, §11.

The L 2000, c 27 amendment effective September 1, 2000 and applies all taxes accruing after August 31, 2000. L 2000, c 27, pt of §4.

Applicability of L 2000, c 198 amendment. L 2000, c 198, §17.

Section 415-14 referred to in definition of “representation” is repealed. For present provision see chapter 414.

2004 amendment retroactive to taxable years beginning after December 31, 1998. L 2004, c 114, §7.

Cross References

Sale of prepaid telephone calling services, see §237-13.8.

Tax Information Release No. 2001-2, “The Director of Taxation’s Authority to Exempt, Exclude, or Apportion the Value of Imported Property, Services, or Contracting for Use Tax Purposes; Use Tax Exemptions for Imported Services and Contracting; and the Use Tax Credit for Taxes Paid to Another State”

Attorney General Opinions

Federal credit union within definition of “purchaser” and immune from tax. Att. Gen. Op. 65-29.

Case Notes

“Value” as the fair and reasonable value may property include freight charges. 56 H. 621, 547 P.2d 2.

Under the plain language of this section, Delaware corporation was not subject to the use tax where the sale of books was directly from the corporation to the state library; the corporation did not import the books from an unlicensed seller, nor did it purchase the books and “resell” the goods to the library and thus could not have imported from itself or purchased from itself. 103 H. 359, 82 P.3d 804.

18-238-2

§238-2 Imposition of tax on tangible personal property; exemptions. There is hereby levied an excise tax on the use in this State of tangible personal property which is imported by a taxpayer in this State whether owned, purchased from an unlicensed seller, or however acquired for use in this State. The tax imposed by this chapter shall accrue when the property is acquired by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rates of the tax hereby imposed and the exemptions thereof are as follows:

- (1) If the importer or purchaser is licensed under chapter 237 and is:
 - (A) A wholesaler or jobber importing or purchasing for purposes of sale or resale; or
 - (B) A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which

finished or saleable product is to be sold in such manner as to result in a further tax on the activity of the manufacturer as the manufacturer or as a wholesaler, and not as a retailer, there shall be no tax; provided that if the wholesaler, jobber, or manufacturer is also engaged in business as a retailer (so classed under chapter 237), paragraph (2) shall apply to the wholesaler, jobber, or manufacturer, but the director of taxation shall refund to the wholesaler, jobber, or manufacturer, in the manner provided under section 231-23(c) such amount of tax as the wholesaler, jobber, or manufacturer shall, to the satisfaction of the director, establish to have been paid by the wholesaler, jobber, or manufacturer to the director with respect to property which has been used by the wholesaler, jobber, or manufacturer for the purposes stated in this paragraph;

- (2) If the importer or purchaser is licensed under chapter 237 and is:
- (A) A retailer or other person importing or purchasing for purposes of resale, not exempted by paragraph (1);
 - (B) A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold at retail in this State, in such manner as to result in a further tax on the activity of the manufacturer in selling such products at retail;
 - (C) A contractor importing or purchasing material or commodities which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses;
 - (D) A person engaged in a service business or calling as defined in section 237-7, or a person furnishing transient accommodations subject to the tax imposed by section 237D-2, in which the import or purchase of tangible personal property would have qualified as a sale at wholesale as defined in section 237-4(a)(8) had the seller of the property been subject to the tax in chapter 237; or
 - (E) A publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials.

the tax shall be one-half of one per cent of the purchase price of the property, if the purchase and sale are consummated in Hawaii; or, if there is no purchase price applicable thereto, or if the purchase or sale is consummated outside of Hawaii, then one-half of one per cent of the value of such property; and

- (3) In all other cases, four per cent of the value of the property.

For purposes of this section, tangible personal property is property that is imported by the taxpayer for use in this State, notwithstanding the fact that title to the property, or the risk of loss to the property, passes to the purchaser of the property at a location outside this State. [L 1965, c 155, pt of §2; Supp, §119-2; HRS §238-2; am imp L 1984, c 90, §1; gen ch 1985; am L 1999, c 71, §8; am L 2000, c 198, §8 and c 271, §2; am L 2004, c 114, §3]

Revision Note

In paragraph (1), section “231-23(c)” substituted for “231-23(d)”.

Note

The 1999 amendment applies to amounts paid or incurred after December 31, 1999. L 1999, c 71, §10.

Applicability of L 2000, c 198 amendment. L 2000, c 198, §17.

The 2000, c 271 amendment applies to gross income or gross proceeds received, or gross value accruing after June 30, 2000. L 2000, c 271, §4.

The 2004 amendment shall take effect retroactive to taxable years beginning after December 31, 1998. L 2004, c 114, §7.

Cross Reference

Tax Information Release No. 26-70, “Application of the General Excise Tax to Commercial Job Printers”

Tax Information Release No. 54-78, “Taxation of Newspaper Printing and Publishing Companies”

Tax Information Release No. 65-79, “State Taxation of Homeowners Associations for Income, General Excise and Use Taxes”

Tax Information Release No. 83-7, “Use Tax Imposed on Coal, Iron Grinding Balls and Firebricks”

Tax Information Release No. 95-5, “Application of the General Excise (‘GE’) and Use Taxes on Sales of Tangible Personal Property (‘TPP’) by an Out-of-State Seller, Including Drop Shipments”

Tax Information Release No. 96-2, “Application of the Original Package Doctrine to the General Excise and Use Taxes”

Tax Information Release No. 98-2, “Application of the General Excise and Use Taxes to Certain Leasing Transaction”

Attorney General Opinions

General excise and use taxes may be applied to imported goods, no longer in transit, regardless of whether imported goods are in their original packages. Att. Gen. Op. 94-02, overruling Att. Gen. Op. 64-38.

Case Notes

Calculation of purchase price and freight charges held to be fair reflection of value of imported equipment. 56 H. 621, 547 P.2d 2.

Freight charges may be properly included in determining “value,” the use tax base; such inclusion does not impose burden on interstate commerce. 56 H. 621, 547 P.2d 2.

Parts imported by taxpayer and used in its repair and maintenance work did not, under the record, constitute goods imported for resale. 58 H. 163, 566 P.2d 1091.

Where appellant argued that use tax imposed on its imported food products pursuant to chapter 238 violated commerce clause, appellant was treated equally with similarly situated taxpayers. 76 H. 1, 868 P.2d 419.

Under the plain language of §238-1, Delaware corporation was not subject to use tax where the sale of the books was directly from the corporation to the state library; the corporation did not import the books from an unlicensed seller, nor did it purchase the books and "resell" the goods to the library and thus could not have imported from itself or purchased from itself. 103 H. 359, 82 P.3d 804.

§238-2.3 Imposition of tax on imported services or contracting; exemptions. (a) There is hereby levied an excise tax on the value of services or contracting as defined in section 237-6 that are performed by an unlicensed seller at a point outside the State and imported or purchased for use in this State. The tax imposed by this chapter shall accrue when the service or contracting as defined in section 237-6 is received by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rates of the tax hereby imposed and the exemptions from the tax are as follows:

- (1) If the importer or purchaser is licensed under chapter 237 and is:
 - (A) Engaged in a service business or calling in which the imported or purchased services or contracting become identifiable elements, excluding overhead, of the services rendered by the importer or purchaser, and the gross income of the importer or purchaser is subject to the tax imposed under chapter 237 on services at the rate of one-half of one per cent or the rate of tax imposed under section 237-13.3; or
 - (B) A manufacturer importing or purchasing services or contracting that become identifiable elements, excluding overhead, of a finished or saleable product (including the container or package in which the product is contained) and the finished or saleable product is to be sold in a manner that results in a further tax on the manufacturer as a wholesaler, and not a retailer;

there shall be no tax imposed on the value of the imported or purchased services or contracting; provided that if the manufacturer is also engaged in business as a retailer as classified under chapter 237, paragraph (2) shall apply to the manufacturer, but the director of taxation shall refund to the manufacturer, in the manner provided under section 231-23(c), that amount of tax that the manufacturer, to the satisfaction of the director, shall establish to have been paid by the manufacturer to the director with respect to services that have been used by the manufacturer for the purposes stated in this paragraph.
- (2) If the importer or purchaser is a person licensed under chapter 237 and is:
 - (A) Engaged in a service business or calling in which the imported or purchased services or contracting become identifiable elements, excluding overhead, of the services rendered by the importer or purchaser, and the gross income from those services when sold by the importer or purchaser is subject to the tax imposed under chapter 237 at the highest rate;
 - (B) A manufacturer importing or purchasing services or contracting that become identifiable elements, excluding overhead, of the finished or saleable manufactured product (including the container or package in which the product is contained) and the finished or saleable product is to be sold in a manner that results in a further tax under chapter 237 on the activity of the manufacturer as a retailer; or
 - (C) A contractor importing or purchasing services or contracting that become identifiable elements, excluding overhead, of the finished work or project required, under the contract, and where the gross proceeds derived by the contractor are subject to the tax under section 237-13(3) as a contractor, the tax shall be one-half of one per cent of the value of the imported or purchased services or contracting; and
- (3) In all other cases, the importer or purchaser is subject to the tax at the rate of four per cent on the value of the imported or purchased services or contracting. [L 1999, c 70, §2; am L 2000, c 198, §9; am L 2003, c 135, §6; am L 2004, c 114, §4]

Note

The 1999 enactment applies to all taxes accruing after December 31, 1999. L 1999, c 70, §11.

Applicability of 2000 amendment. L 2000, c 198, §17.

2004 amendment retroactive to taxable years beginning after December 31, 1998. L 2004, c 114, §7.

§238-2.5 REPEALED. L 2003, c 135, §13.

[§238-2.6] County surcharge on state tax; administration. (a) The county surcharge on state tax, upon the adoption of a county ordinance and in accordance with the requirements of section 46-16.8, shall be levied, assessed, and collected as provided in this section on the value of property and services taxable under this chapter. No county shall set the surcharge on state tax at a rate greater than one-half per cent of the value of property taxable under this chapter. All provisions of this chapter shall apply to the county surcharge on state tax. With respect to the surcharge, the director shall have all the rights and powers provided under this chapter. In addition, the director of taxation shall have the exclusive rights and power to determine the county or counties in which a person imports or purchases tangible personal property

and, in the case of a person importing or purchasing tangible property in more than one county, the director shall determine, through apportionment or other means, that portion of the surcharge on state tax attributable to the importation or purchase in each county.

(b) Each county surcharge on state tax that may be adopted shall be levied beginning in the taxable year after the adoption of the relevant county ordinance; provided that no surcharge on state tax may be levied prior to January 1, 2007.

(c) No county surcharge on state tax shall be established upon any use taxable under this chapter at the one-half per cent tax rate or upon any use that is not subject to taxation or that is exempt from taxation under this chapter.

(d) The director of taxation shall revise the use tax forms to provide for the clear and separate designation of the imposition and payment of the county surcharge on state tax.

(e) The taxpayer shall designate the taxation district to which the county surcharge on state tax is assigned in accordance with rules adopted by the director of taxation under chapter 91. The taxpayer shall file a schedule with the taxpayer's periodic and annual use tax returns summarizing the amount of taxes assigned to each taxation district.

(f) The penalties provided by section 231-39 for failure to file a tax return shall be imposed on the amount of surcharge due on the return being filed for the failure to file the schedule required to accompany the return. In addition, there shall be added to the tax an amount equal to ten per cent of the amount of the surcharge and tax due on the return being filed for the failure to file the schedule or the failure to correctly report the assignment of the use tax by taxation district on the schedule required under this subsection.

(g) All taxpayers who file on a fiscal year basis whose fiscal year ends after December 31 of the year prior to the taxable year in which the taxes become effective, shall file a short period annual return for the period preceding January 1 of the taxable year in which the taxes become effective. Each fiscal year taxpayer shall also file a short period annual return for the period starting on January 1 of the taxable year in which the taxes become effective, and ending before January 1 of the following year. [L 2005, c 247, §4]

Note

L 2005, c 247, §9 provided:

"SECTION 9. This Act [enacting 46-16.8, 237-8.6, 238-2.6, and 248-2.6, amending 437D-8.4, and repealing chapter 51D, HRS] shall take effect upon its approval [became law without the governor's signature on July 12, 2005]; provided that:

- (1) If none of the counties of the State adopt an ordinance to levy a county surcharge on state tax by December 31, 2005, this Act shall be repealed and section 437D-8.4, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act [July 12, 2005];
- (2) If any county does not adopt an ordinance to levy a county surcharge on state tax by December 31, 2005, it shall be prohibited from adopting such an ordinance pursuant to this Act, unless otherwise authorized by the legislature through a separate legislative act;
- (3) If an ordinance to levy a county surcharge on state tax is adopted by December 31, 2005:
 - (A) The ordinance shall be repealed on December 31, 2022;
 - (B) This Act shall be repealed on December 31, 2022; and
 - (C) Section 437D-8.4, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act [July 12, 2005]."

18-238-3

§238-3 Application of tax, etc. (a) The tax imposed by this chapter shall not apply to any property, services, or contracting or to any use of the property, services, or contracting that cannot legally be so taxed under the Constitution or laws of the United States, but only so long as, and only to the extent to which the State is without power to impose the tax.

To the extent that any exemption, exclusion, or apportionment is necessary to comply with the preceding sentence, the director of taxation shall:

- (1) Exempt or exclude from the tax under this chapter, property, services, or contracting or the use of property, services, or contracting exempted under chapter 237; or
- (2) Apportion the gross value of services or contracting sold to customers within the State by persons engaged in business both within and without the State to determine the value of that portion of the services or contracting that is subject to taxation under chapter 237 for the purposes of section 237-21.

Any provision of law to the contrary notwithstanding, exemptions or exclusions from tax under this chapter allowed on or before April 1, 1978, under the provisions of the Constitution of the United States or an act of the Congress of the United States to persons or common carriers engaged in interstate or foreign commerce, or both, whether ocean-going or air, shall continue undiminished and be available thereafter.

(b) The tax imposed by this chapter shall not apply to any use of property, services, or contracting the transfer of which property, services, or contracting to, or the acquisition of which by, the person so using the same, has actually been or actually is taxed under chapter 237.

(c) The tax imposed by this chapter shall be paid only once upon or in respect of the same property, services, or contracting; provided that nothing in this chapter contained shall be construed to exempt any property, services, or contracting, or the use thereof from taxation under any other law of the State.

(d) The tax imposed by this chapter shall be in addition to any other taxes imposed by any other laws of the State, except as otherwise specifically provided herein; provided that if it be finally held by any court of competent jurisdiction, that the tax imposed by this chapter may not legally be imposed in addition to any other tax or taxes imposed by any other law or laws with respect to the same property, services, or contracting, or the use thereof, then this chapter

shall be deemed not to apply to the property, services, or contracting, or the use thereof under such specific circumstances, but such other laws shall be given full effect with respect to the property, services, or contracting, or use.

(e) The tax imposed by this chapter shall not apply to any use of property exempted by section 238-4.

(f) The tax imposed by this chapter shall not apply to any use or consumption of aircraft and vessels, the transfer of which aircraft or vessel to, or the acquisition of which by, the person so using or consuming the same, or the rental for the use of the aircraft or vessel, has actually been or actually is taxed under chapter 237.

(g) The tax imposed by this chapter shall not apply to any intoxicating liquor as defined in chapter 244D and cigarettes and tobacco products as defined in chapter 245, imported into the State and sold to any person or common carrier in interstate commerce, whether ocean-going or air, for consumption out-of-state by the person, crew, or passengers on the shipper's vessels or airplanes.

(h) The tax imposed by this chapter shall not apply to any use of vessels constructed under section 189-25 prior to July 1, 1969.

(i) Each taxpayer liable for the tax imposed by this chapter on tangible personal property, services, or contracting shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the taxpayer with respect to the same transaction and property, services, or contracting to another state and any subdivision thereof, but such credit shall not exceed the amount of the use tax imposed under this chapter on account of the transaction and property, services, or contracting. The director of taxation may require the taxpayer to produce the necessary receipts or vouchers indicating the payment of the sales or use tax to another state or subdivision as a condition for the allowance of the credit.

(j) The tax imposed by this chapter shall not apply to any use of property, services, or contracting exempted by section 237-26 or section 237-29.

(k) The tax imposed by this chapter shall not apply to any use of air pollution control facility exempted by section 237-27.5. [L 1965, c 155, pt of §2 and c 201, §41; Supp. §119-3; am L 1966, c 28, §5; am L 1967, c 34, §1; HRS §238-3; am L 1969, c 181, §1; am L 1970, c 134, §2 and c 180, §16; am L 1979, c 74, §2; am imp L 1984, c 90, §1; am L 1985, c 16, §9; gen ch 1985; am L 1992, c 305, §2; am L 1993, c 220, §5; am L 1999, c 70, §5; am L 2000, c 198, §10]

Note

The 1999 amendment applies to all taxes accruing after December 31, 1999. L 1999, c 70, §11.

Applicability of 2000 amendment. L 2000, c 198, §17.

Cross References

Exemptions, see §§237-26, 237-29, and L 1965, c 201, §28.

Tax Information Release No. 22-69, "Sales of Tangible Personal Property to the American National Red Cross"

Tax Information Release No. 93-3, "Calculation of Use Tax Base on Motor Vehicles Imported Into Hawaii for Use as Provided Under Chapter 238, Hawaii Revised Statutes (HRS)"

Tax Information Release No. 95-5, "Application of the General Excise ('GE') and Use Taxes on Sales of Tangible Personal Property ('TPP') by an Out-of-State Seller, Including Drop Shipments"

Tax Information Release No. 96-1, "Computer Company's Provision of In-State Repair Services Creates Nexus"

Tax Information Release No. 2001-2, "The Director of Taxation's Authority to Exempt, Exclude, or Apportion the Value of Imported Property, Services, or Contracting for Use Tax Purposes; Use Tax Exemptions for Imported Services and Contracting; and the Use Tax Credit for Taxes Paid to Another State"

Case Notes

Where comparison between out-of-state taxpayer and its in-state counterpart shows tax advantage to the former, such taxpayer has no ground to complaint that tax violates the Commerce Clause or subsection (a) of this section. 58 H. 163, 566 P.2d 1091.

Item ordered by exempt organization from out-of-state suppliers for direct delivery to persons in Hawaii were subject to tax. 65 H. 199, 649 P.2d 1126.

Cited: 76 H. 1, 868 P.2d 419.

18-238-4

§238-4 Certain property used by producers. If a licensed producer, or a cooperative association acting under the authority of chapter 421 or 422, in order to sell to such producer, or a licensed person, imports into the State or acquires in the State commodities, materials, items, services, or living things enumerated in section 237-4(3) and (5) to (7), then section 237-4 shall apply. If section 237-4 applies and the producer is engaged in the sale of the producer's products at retail or in any manner other than at wholesale, then the tax upon use of property in the State imposed by section 238-2(2) shall apply the same as in the case of a purchaser who is a licensed retailer. In other such cases no tax shall be imposed under this chapter. [L 1965, c 155, pt of §2; Supp. §119-4; am L 1966, c 28, §6; am L 1967, c 155, §2; HRS §238-4; am L 1984, c 73, §4]

Revision Note

Chapter 422 referred to in text is repealed.

18-238-5

§238-5 Returns. (a) On or before the last day of each calendar month, any person who has become liable for the payment of a tax under this chapter during the preceding calendar month in respect of any property, services, or

contracting, or the use thereof, shall file a return with the assessor of the taxation district in which the property was held or the services or contracting were received when the tax first became payable, or with the director of taxation at Honolulu, setting forth a description of the property, services, or contracting and the character and quantity thereof in sufficient detail to identify the same or otherwise in such reasonable detail as the director by rule shall require, and the purchase price or value thereof as the case may be. The return shall be accompanied by a remittance in full of the tax, computed at the rate specified in section 238-2 or 238-2.3 upon the price or value so returned. Any tax remaining unpaid after the last day following the end of the calendar month during which the tax first became payable shall become delinquent; provided that a receipt from a seller required or authorized to collect the tax, given to taxpayer in accordance with section 238-6, shall be sufficient to relieve the taxpayer from further liability for the tax to which the receipt may refer, or for the return thereof.

(b) Notwithstanding subsection (a), a taxpayer may be eligible to file the taxpayer's return required under this section and make payments thereon on a quarterly or semiannual basis during the calendar or fiscal year, the return and payment to be made on or before the last day of the calendar month after the close of each quarter or semiannual period, to wit:

- (1) For calendar year taxpayers filing on a quarterly basis, on or before April 30, July 31, October 31, and January 31;
- (2) For calendar year taxpayers filing on a semiannual basis, on or before July 31, and January 31;
- (3) For fiscal year taxpayers filing on a quarterly basis, on or before the last day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year and on or before the last day of the month following the close of the fiscal year; or
- (4) For fiscal year taxpayers filing on a semiannual basis, on or before the last day of the seventh month following the beginning of the fiscal year and on or before the last day of the month following the close of the fiscal year;

if the taxpayer possesses a valid and current permit to file the taxpayer's general excise tax return and to make payments thereon on a quarterly or semiannual basis issued by the director pursuant to section 237-30. A taxpayer may also be eligible to make monthly payments based on the taxpayer's estimated quarterly or semiannual liability with a reconciliation return at the end of each quarter or semiannual period during the calendar or fiscal year, as heretofore provided, if the taxpayer possesses a valid and current permit to file quarterly or semiannual reconciliation general excise tax returns and to make monthly payments, issued by the director pursuant to section 237-30.

(c) On or before the twentieth day of the fourth month following the close of the taxable year, every person who has become liable for the payment of taxes both under this chapter and also under chapter 237 during the preceding calendar or fiscal year shall file a return summarizing the person's liability under this chapter for the taxable year, in such form as the director shall prescribe and shall file it with the person's annual return of general excise taxes. [L 1965, c 155, pt of §2; Supp. §119-5; am L 1966, c 19, §2; am L 1967, c 37, §1; HRS §238-5; am L 1981, c 137, §1; am imp L 1984, c 90, §1; gen ch 1985; am L 1993, c 39, §3; am L 1999, c 70, §6; am L 2000, c 198, §11]

Note

The 1999 amendment applies to all taxes accruing after December 31, 1999. L 1999, c70, §11.
Applicability of 2000 amendment. L 2000, c 198, §17.

18-238-6

§238-6 Collection of tax by seller; penalty. (a) For purposes of the taxes due under sections 238-2 and 238-2.3, every seller having in the State, regularly or intermittently, any property, tangible or intangible, any place of business, or any representation as hereinabove defined, (and irrespective of the seller's having or not having qualified to do business in the State) shall, if the seller makes sales of property, services, or contracting for use in the State (whether or not the sales are made in the State), collect from the purchaser the taxes imposed by sections 238-2 and 238-2.3, on the use of the property, services, or contracting so sold by the seller, if the seller is not subject to the use tax under this chapter on the importation of the property into the State. The collection shall be made within twenty days after the accrual of the tax or within such other period as shall be fixed by the director of taxation upon the application of the seller, and the seller shall give to the purchaser a receipt therefor in the manner and form prescribed by the director; provided that this subsection shall not apply to vehicles registered under section 286-50.

(b) The director, in the director's discretion, upon application therefor and under terms and conditions prescribed by the director, may relieve any seller of the duty of collecting and paying over the tax imposed by subsection (a) above, if the director is satisfied that the tax can be effectively collected by other means. Exemption from the duty of collecting the tax may be canceled at any time when the director finds that the tax cannot be effectively collected by other means. The director likewise may terminate the duty and authority of any seller to collect and pay over the tax imposed by subsection (a) above if the director finds, as to such seller, that the tax cannot be effectively collected by such means.

(c) The director, in the director's discretion, upon application therefor and under terms and conditions prescribed by the director, may authorize the collection of the tax imposed by this chapter by a seller not otherwise required to collect the tax. The seller, when so authorized, shall have the duty of collecting and paying over the tax in the same

manner and subject to the same requirements as set out in subsection (a). The authority may be canceled at any time when, in the judgment of the director, the tax can more effectively be collected by other means.

(d) In case any seller required or authorized to collect the tax under this chapter fails to collect the same, or having collected the tax fails to pay over the same as provided by this chapter, the seller shall nevertheless be personally liable to the State for the amount of the tax, but it shall be a defense to such liability that the indebtedness for the price is a worthless account actually charged off for income tax purposes, if and to the extent that the collections of the price do not equal the tax.

(e) Every seller required or authorized to collect the tax shall make returns and payments of the tax at the same time and in the same manner as is provided with respect to taxpayer by section 238-5. All provisions of this chapter with respect to returns, reports, records, payments, penalties, and interest, appeals, investigations, and audits, assessments, tax collections procedure, criminal offenses, and the general administrative powers and duties of the director, shall apply to such sellers the same as to taxpayers.

(f) The tax collected pursuant to this section shall be held in trust for the State and for payment to the proper collecting officer in the manner and at the time required by this chapter. Any person collecting such tax who appropriates or converts the same to the person's own use or to any use other than the payment of the tax as herein provided, and who fails to pay over the amount of tax so collected at the time required by this chapter, shall be deemed guilty of an embezzlement of property of the State and shall be fined more than five times the amount of money so embezzled or imprisoned at hard labor not more than ten years, and any failure by the person so collecting the tax to pay the same over within the time provided by this chapter, after demand therefor, shall be taken and held to be prima facie evidence of the embezzlement. [L 1965, c 155, pt of §2; Supp. §119-6; HRS §238-6; am imp L 1984, c 90, §1; gen ch 1985; am L 1990, c 184, §10; am L 1999, c 70, §7; am L 2000, c 198, §12; am L 2003, c 135, §7; am L 2004, c 114, §5]

Note

Development agreement requirements and effect of 1990 amendment until December 31, 2002. L 1990, c 184, §§11, 13.

The 1999 amendment applies to all taxes accruing after December 31, 1999. L 1999, c 70, §11.

Applicability of 2000 amendment. L 2000, c 198, §17.

2004 amendment retroactive to taxable years beginning after December 31, 1998. L 2004, c 114, §7.

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-610(2), 640, 660.

Transit capital development fund, see chapter 51D.

Tax Information Release No. 93-5, "Use in Hawaii of the Uniform Sales and Use Tax Certificate (Multijurisdiction) Issued by the Multistate Tax Commission"

§238-7 Audits; additional assessments; refunds. Sections 237-36 to 237-40 of the general excise tax law are hereby made applicable to the taxes imposed by this chapter, to the refunding of overpayments thereof, and to assessments, investigations, and audits in connection therewith, for which purpose any references therein to "gross income" or "gross proceeds of sale" shall be deemed to refer to the purchase price or value, as the case maybe, subject to tax under this chapter, and any references to the "annual return" shall, if the taxpayer is not required to file an annual return under this chapter, be deemed to refer to the monthly return mentioned in the first paragraph of section 238-5. [L 1965, c 155, pt of §2; Supp. §119-7; HRS §238-7]

Cross Reference

Tax Information Release No. 2002-1, "Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest"

§238-8 Appeal, correction of assessment. If any person having made the return and paid the tax as provided by this chapter feels aggrieved by the assessment so made upon the person by the director of taxation, the person may, appeal the assessment in the manner and within the time and in all other respects as provided in section 235-114, for which purpose the word "income" shall be deemed to refer to purchase price or value, as the case may be. The hearing and disposition of the appeal, including the distribution of costs shall be as provided in chapter 232. [L 1965, c 155, pt of §2; Supp. §119-8; HRS §238-8; am imp L 1984, c 90, §1; gen ch 1985; am L 2000, c 199, §5; am L 2004, c 123, §5]

Note

The 2000 amendment does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before June 8, 2000. L 2000, c 199, §§11 and 13.

The 2004 amendment applies to tax appeals filed on or after July 1, 2004. L 2004, c 123, §14.

Cross Reference

Tax Information Release No. 2002-1, "Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest"

Case Notes

Tax appeal court has jurisdiction to entertain action contesting tax director's decision even though taxpayer failed to follow required procedures. 69 H. 515, 750 P.2d 81.

§238-9 Records. Every person who is engaged in any business in the State and who is required under this chapter to make returns, shall keep in the English language in the State and preserve for a period of three years, books of account or other records in sufficient detail to enable the director of taxation, as far as reasonably practicable, to determine whether or not any taxes imposed by this chapter are payable in respect of the property, services, or contracting concerned, and if so payable, the amount thereof. [L 1965, c 155, pt of §2; Supp, §119-9; HRS §238-9; am L 1969, c 274, §5; am L 1999, c 70, §8; am L 2000, c 198, §13]

Note

The 1999 amendment applies to all taxes accruing after December 31, 1999. L 1999, c 70, §11.
Applicability of 2000 amendment. L 2000, c 198, §17.

Cross Reference

Tax Information Release No. 2002-1, "Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest"

§238-9.5 Motor vehicle importation; report by dealers; proof of payment. (a) Every dealer, as defined in section 437-1.1, shall submit a report to the director, on or before the last day of each calendar month, for all motor vehicles delivered by the dealer in the prior month as a courtesy delivery. The report shall contain the name and address of the dealer making the courtesy delivery, name and address of the seller of the vehicle, type of motor vehicle, the landed value of the vehicle, the name and address of the purchaser or importer, the date of importation, and other information relevant to the courtesy delivery as requested by the director.

As used in this section, "courtesy delivery" means the preparation for delivery and the delivery by a dealer of a motor vehicle imported into the State by a person who purchased the motor vehicle from an out-of-state motor vehicle manufacturer or an out-of-state dealer and does not apply to motor vehicles sold by the in-state dealer.

(b) The director of taxation shall prepare forms necessary for individuals importing motor vehicles into the State to prove payment of the use tax necessary to register the motor vehicle. [L 1993, c 45, §1; am L 2002, c 225, §1]

§238-10 Penalties. Penalties and interest shall be added to and become a part of the tax, when and as provided by section 231-39. [L 1965, c 155, pt of §2; Supp, §119-10; HRS §238-10]

§238-11 Collection of taxes by assumpsit or distraint; concurrent jurisdiction of district judges. Any tax which is delinquent under this chapter may be collected:

- (1) By action in the name of the director of taxation or any collector or assistant collector of taxes, in assumpsit, with or without attachment of the real or personal property of the person liable, and it shall be unnecessary, in order to secure the issuance of the writ of attachment, for the officer bringing the action to file any affidavit, other than the usual sworn complaint in ordinary assumpsit actions where no attachment is sought, with a prayer for the writ. In all such actions the several district judges shall have concurrent jurisdiction with the circuit courts, irrespective of the amount claimed.
- (2) By distraint in the manner provided by section 231-25. [L 1965, c 155, pt of §2; Supp, §119-11; HRS §238-11; am L 1970, c 188, §39]

Rules of Court

Attachment, etc., see HRCF rule 64.
Verification, see HRCF rule 11.

§238-12 REPEALED. L 1995, c 92, §27.

§238-13 Other provisions of general excise tax law applicable. In respect of (1) the examination of books and records and of taxpayers and other persons, (2) procedure and powers upon failure or refusal by a taxpayer to make a return or a proper return, and (3) the general administration of this chapter, the director of taxation shall have all the rights and powers conferred upon the director by the general excise tax law with respect to taxes thereby or thereunder imposed; and, without restriction upon these rights and powers, sections 237-8, 237-30, 237-34, and 237-36 to 237-41 are hereby made applicable to and with respect to the taxes and the taxpayers, tax officers, and other persons, and the matters and things affected or covered by this chapter, insofar as not inconsistent with this chapter, in the same manner, as nearly as may be, as in similar cases covered by the general excise tax law. [L 1965, c 155, pt of §2; Supp, §119-13; HRS §238-13; am imp L 1984, c 90, §1; gen ch 1985; am L 2000, c 34, §2]

Note

Applies to discussions regarding the assessment of additional taxes after April 20, 2000. L 2000, c 34, §4.

§238-14 Taxes state realizations. All taxes collected under this chapter shall be state realizations. [L 1965, c 155, pt of §2; Supp, §119-14; HRS §238-14]

§238-15 Short title. This chapter may be cited as the “Use Tax Law”. [L 1965, c 155, pt of §2; Supp, §119-15; HRS §238-15]

§238-16 Rules and regulations. The director of taxation may adopt and promulgate rules and regulations to carry out the purposes of this chapter. [L 1965, c 155, pt of §2; Supp, §119-16; HRS §238-16]

Cross References

Rules, see chapter 91.

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